TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 260.

WILMINGTON TRANSPORTATION COMPANY, PLAINTIFF IN ERROR,

vs.

RAILROAD COMMISSION OF CALIFORNIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED FEBRUARY 28, 1905.

(24,063)

(24,062)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 369.

WILMINGTON TRANSPORTATION COMPANY, PLAINTIFF IN ERROR,

vs.

RAILROAD COMMISSION OF CALIFORNIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 9, 1914.

1 In the Supreme Court of the State of California.

WILMINGTON TRANSPORTATION COMPANY, a Corporation, Petitioner,
vs.
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Respondent.

Petition for Writ of Review.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the State of California:

The petition of Wilmington Transportation Company, a corporation, the petitioner above named, respectfully represents and alleges:

I.

That on or about the 25th day of March, 1913, a complaint was filed with the respondent above named, the Railroad Commission of the State of California, by J. H. Miller and E. Donaldson, partners doing business under the firm name and style of Miller and Donaldson, as complainants, against this petitioner as defendant, complaining of and concerning the rates and fares charged by this petitioner for the transportation of passengers and freight between the ports of San Pedro and Avalon, situated in the County of Los Angeles, State of California, and praying that said rates and fares be adjusted and reduced by said Commission, a copy of which said complaint is hereto annexed, marked "Exhibit A," and made a part hereof.

II.

That thereafter, to-wit, on or about the 21st day of April, 1913, this petitioner, as the defendant named in said complaint, duly moved the said Railroad Commission to dismiss the said complaint,
2 and all proceedings thereon, on the ground that the said Railroad Commission had no jurisdiction in respect to the said transportation of passengers and freight referred to in said complaint, or the rates and fares charged therefor, for the reason that said transportation comprises and constitutes commerce with foreign nations, and that exclusive jurisdiction to regulate the same is vested by the Constitution of the United States of America in the Congress of the United States.

III.

That thereafter the said Railroad Commission heard and considered said motion to dismiss and the oral arguments and written briefs of the respective parties thereon, and thereafter, to-wit, on the 9th day of July, 1913, said Railroad Commission made and entered its decision and order denying said motion to dismiss said complaint and proceedings thereon, and requiring your petitioner

to satisfy said complaint or to answer to the same, a copy of which said decision and order is herewith annexed, marked "Exhibit B," and made a part hereof.

IV.

That thereafter, to-wit, on the 17th day of July, 1913, your petitioner, as the defendant in said complaint, duly made and filed with said Railroad Commission its petition for a rehearing by said Railroad Commission of petitioner's said motion to dismiss said complaint and the proceedings thereon, and of the said decision and order of said Railroad Commission, denying said motion to dismiss, and requiring this petitioner to satisfy said complaint, or answer to same, a copy of which said petition for rehearing is hereto annexed, marked "Exhibit C," and made a part hereof.

3

V.

That thereafter, to-wit, on the 19th day of July, 1913, said Railroad Commission made and entered its decision and order denying said petition for a rehearing of said matters, a copy of which order is hereto annexed, marked "Exhibit D," and made a part hereof.

VI.

That the said Railroad Commission, in making its aforesaid decisions and orders, assuming jurisdiction of the said complaint of said Miller and Donaldson, and requiring your petitioner to satisfy or answer to same, and denying said petition for a rehearing thereof, did not regularly or lawfully pursue its authority under the Constitution and laws of the State of California, but on the contrary acted in excess of and without any jurisdiction or authority; and that said orders and decisions of said Railroad Commission violate and deny the rights of your petitioner under the Constitution and laws of the United States of America: and in that behalf your petitioner further alleges:

That the route of navigation actually and necessarily followed by the vessels of your petitioner in transporting passengers or freight between said ports of San Pedro and Avalon, extends over and upon the high seas, and outside the territorial jurisdiction of the State of California, for a distance of upwards of twenty miles, being more than three-fourths of the total length of said route between said ports of San Pedro and Avalon.

That the transportation of passengers and freight by the petitioner between the said ports of San Pedro and Avalon, referred to in said complaint, comprises and constitutes commerce with foreign nations, and that exclusive jurisdiction to regulate the same is vested by the Constitution of the United States of America in the Congress of the United States.

That the Constitution and statutes of the State of Cali-
4 fornia, purporting to give to said Railroad Commission jurisdiction to regulate transportation of passengers or freight over waters lying outside of the territorial jurisdiction of said state

are contrary to and in violation of said Constitution of the United States and of no effect.

That said Railroad Commission has no jurisdiction or authority to regulate said transportation referred to in said complaint or to adjust, reduce, or regulate the rates or fares charged by this petitioner therefor.

That the said decision and order of said Railroad Commission requiring this petitioner to satisfy said complaint, or to answer the same is unlawful and in excess of the authority and jurisdiction of said Railroad Commission.

That this petitioner, by its said motion to dismiss said complaint and the proceedings thereon, and by its petition for a rehearing thereof, has claimed and now claims, the right, privilege and immunity under the Constitution and laws of the United States to be free of any control or interference by said Railroad Commission in the matter of said transportation of freight and passengers between said ports of San Pedro and Avalon and the rates and fares charged therefor; and that said decisions and orders of said Railroad Commission requiring this petitioner to satisfy said complaint or to answer the same, and denying said petition for a rehearing, are against, and deny to this petitioner, said right, privilege and immunity so claimed by this petitioner.

VII.

That there is no appeal, and that your petitioner has no plain, speedy, or adequate remedy, nor any remedy, other than by writ of review issuing out of this court, whereby it may have redress or relief from the aforesaid unlawful decisions and orders of said Railroad Commission, denying your petitioner's motion to dismiss said complaint, and requiring your petitioner to satisfy or answer to the same.

Wherefore, your petitioner prays that this Honorable Court will forthwith issue its writ of review, directed to said Railroad Commission of the State of California, and requiring said Railroad Commission to certify to this court its record in the case aforesaid, wherein said Miller and Donaldson are complainants, and your petitioner is defendant; and that upon the return and hearing of said writ of review this court will enter its judgment and decree setting aside and holding for naught the aforesaid decisions, and orders of said Railroad Commission, denying your petitioner's motion to dismiss said complaint of said Miller & Donaldson, and requiring your petitioner to satisfy or answer to said complaint.

And your petitioner will ever pray.

WILMINGTON TRANSPORTATION COMPANY,
By WILLIAM BANNING, *President,*
Petitioner.

GIBSON, DUNN & CRUTCHER,
Attorneys for Petitioner.

6 STATE OF CALIFORNIA,
County of Los Angeles, ss:

William Banning, being first duly sworn, deposes and says:
That he is an officer, to-wit, the President of the Wilmington Transportation Company, the corporation named *named* as petitioner in the foregoing petition; that he has read the said petition and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein alleged on information and belief, and as to those matters that he believes it to be true.

WILLIAM BANNING.

Subscribed and sworn to before me this 2 day of August, 1913.
[SEAL.] J. L. FLEMING,
Notary Public in and for the County of Los Angeles, State of California.

7 EXHIBIT "A."

Before the Railroad Commission of the State of California.

J. H. MILLER and E. DONALDSON, Partners, Doing Business under the Firm-name and Style of Miller & Donaldson, Complainants,

v.

THE WILMINGTON TRANSPORTATION COMPANY, a Corporation, Defendant.

Complaint.

The complaint of J. H. Miller and E. Donaldson respectfully shows:

I.

That J. H. Miller and E. Donaldson, the complainants herein, are partners, doing business under the firm name and style of "Miller & Donaldson;" that they are merchants engaged in the business of selling groceries, meats, hardware and provisions at Avalon, Santa Catalina Island, Los Angeles County, State of California, and that their post office address is Avalon, Santa Catalina Island, Los Angeles County, State of California.

II.

That the Wilmington Transportation Company, the defendant herein, is a corporation, organized and existing by virtue of and under the laws of the State of California; that its occupation or business is that of a common carrier of persons and cargo, or freight, or goods; that its vessels ply between the port of San Pedro and that of Avalon, Santa Catalina Island, both of said ports being in the County of Los Angeles, State of California; that its principal place

of business is at Wilmington, Los Angeles County, State of
8 California, and that its post office address is 594 Pacific Electric Building, corner of Sixth and Main Streets, in the City of Los Angeles, State of California.

III.

That the distance from the port of San Pedro to that of Avalon, Santa Catalina Island, is about twenty-seven (27) miles; that the Wilmington Transportation Company, the defendant herein, is the only common carrier of persons or freight whose vessels ply between the said two ports; that the rates charged by it for the transportation of persons from San Pedro to Avalon or from Avalon to San Pedro, are One 50/100 ($1.50) dollars per person, each way, or Two 25/100 ($2.25) dollars per person for a round trip; that the rates of freightage charged by it for the transportation of freight, or goods, or cargo are substantially given below, as follows, to-wit:

Brooms	40¢ per 100 lbs.
Cans in boxes or crates	40¢ " " "
Cereals & Produce C. R. Wet & Waste	20¢ " " "
Flour, C. R. Wet & Waste, released	40¢ " " "
China & Jap	40¢ " " "
Cigars	40¢ " " "
Cigars boxed	20¢ " " "
Candy	20¢ " " "
Cream & Dairy Produce	20¢ " " "
Canned Goods	40¢ " " "
Sugar	20¢ " " "
Hardware	20¢ " " "
Paints	20¢ " " "
Furniture	30¢ " " "
Household Furniture	20¢ " " "
Show Cases	60¢ " " "
9 Goods in Gunny Sacks	20¢ per 100 lbs.
Meats in Gunny Sacks	20¢ " " "
Groceries, Sundries, in barrels or box	20¢ " " "

That the said rates for the transportation of persons, freight, cargo and goods are grossly unjust and unreasonable per se, and that the said rates are contrary to Section 13 (*a*) of the Public Utilities Act of the year 1912.

IV.

That the complainants herein are, and for the last four (4) years have been shippers of goods, freight or cargo, over the steam-ship line of the defendant, on vessels owned by the defendant and operated by it between the said ports of San Pedro and Avalon; that the freightage paid by the plaintiffs to the defendant amounts, and for the last four (4) years past has amounted to about two thousand five hundred ($2,500.00) Dollars for each year; and that by reason of the excessive freight rates charged by the defendant for the trans-

portation of freight, goods or cargo from San Pedro to Avalon during the last four (4) years, the complainants herein have been damaged in the sum of One Thousand ($1,000.00) Dollars per year; and that, in case the defendant is permitted to continue to charge the said rates, the plaintiffs will suffer irreparable injury.

V.

That the rate of One 50/100 ($1.50) Dollars per person for transportation between San Pedro and Avalon, or between Avalon and San Pedro, or of two 25.100 ($2.25) Dollars per person for the round trip, between the said two ports, is excessive, prohibitive, unjust and unreasonable, in that it, the said rate, prevents a multitude of persons from visiting the town of Avalon, Santa Catalina Island, and therefore deprives the said complainants of profits which would undoubtedly accrue to them by reason of extended business.

10 Wherefore, complainants ask that this honorable Board of Railroad Commissioners adjust the rates charged by the said Wilmington Transportation Company for the transportation of persons, or goods, freight or cargo, and that it reduce said rates to a just and reasonable basis.

Dated at Avalon, California, this 21st day of March, 1913.

J. H. MILLER,
Complainant.
E. DONALDSON,
Complainant.

KARL L. TATZER,
Attorney for Complainants,
1146 *Title Ins. Bldg., Los Angeles, Calif.*

STATE OF CALIFORNIA,
County of Los Angeles, ss:

J. H. Miller, being first duly sworn, deposes and says: that he is one of the complainants in the action as entitled as above; that he has read the foregoing complaint and knows the contents thereof; and that the same is true as of his own knowledge, except as to matters which are therein stated on information or belief, and that as to those matters he believes it to be true.

J. H. MILLER.

Subscribed and sworn to before me this 21 day of March, 1913.

[NOTARIAL SEAL.] W. M. LE FAVOR,
Notary Public in and for the County of Los Angeles, State of California.

11 STATE OF CALIFORNIA,
County of Los Angeles, ss:

E. Donaldson, being first duly sworn, deposes and says: that he is one of the complainants in the action as entitled as above; that he has read the foregoing complaint and knows the contents thereof;

and that the same is true as of his own knowledge, except as to matters which are therein stated on information or belief, and that as to those matters he believes it to be true.

E. DONALDSON.

Subscribed and sworn to before me, this 21 day of March, 1913.

[NOTARIAL SEAL.] W. M. LE FAVOR,
Notary Public in and for the County of Los Angeles, State of California.

12 "EXHIBIT B."

Order.

Defendant's motion to dismiss the complaint in the above entitled proceeding having come on duly for hearing and argument having been had thereon, and said motion having been submitted,

It is hereby ordered that said motion be and the same is hereby denied and that the defendant be and he is hereby directed to satisfy the complaint or to answer within ten days.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of July, 1913.

JOHN M. ESHLEMAN,
ALEX GORDON,
MAX THELEN,
H. D. LOVELAND,
Commissioners.

13 "EXHIBIT C."

Before the Railroad Commission of the State of California.

Case No. 381.

J. H. MILLER and E. DONALDSON, Partners, Doing Business under the Firm-name and Style of Miller and Donaldson, Complainants,

vs.

THE WILMINGTON TRANSPORTATION COMPANY, a Corporation, Defendant.

Petition for Rehearing.

The defendant in the above entitled proceeding respectfully petitions that a rehearing be granted of defendant's motion to dismiss the said proceeding and the complaint therein, and of the decision and order of this Commission made in said proceeding, assuming jurisdiction thereof, and of said complaint therein, and requiring

this defendant to satisfy the said complaint or to answer the same; and as grounds for such rehearing defendant avers:

1. That the transportation of passengers and freight by the defendant between the ports of San Pedro and Avalon, referred to in said complaint herein, comprises and constitutes commerce with foreign nations, and that exclusive jurisdiction to regulate the same is vested by the Constitution of the United States of America in the Congress of the United States.

2. That the Constitution and statutes of the State of California, purporting to give to this Commission jurisdiction to regulate transtation of passengers or freight over waters lying outside of the territorial jurisdiction of said state are contrary to and in viola-
14 tion of said Constitution of the United States and of no effect.

3. That this Commission has no jurisdiction or authority to regulate said transportation referred to in said complaint herein or to adjust, reduce, or regulate the rates or fares charged by the defendant therefor.

4. That the said decision and order of this Commission requiring this defendant to satisfy said complaint herein or to answer the same is unlawful and in excess of the authority or jurisdiction of this Commission.

5. That this defendant, by its said motion to dismiss this proceeding and said complaint herein, has claimed, and by this petition for a rehearing herein now claims, the right, privilege and immunity under the Constitution and laws of the United States to be free of any control or interference by this Commission in the matter of said transportation of freight and passengers between said ports of San Pedro and Avalon and the rates and fares charged therefor; and that said decision and order of this Commission requiring this defendant to satisfy said complaint herein or to answer the same is against, and denies to this defendant, said right, privilege and immunity so claimed by this defendant.

Wherefore, this defendant prays that a rehearing be granted by this Commission as aforesaid, and that thereupon said decision and order requiring this defendant to satisfy said complaint herein or to answer the same, may be vacated and set aside, and this proceeding and the said complaint herein be dismissed.

WILMINGTON TRANSPORTATION COMPANY,
By WILLIAM BANNING, *President.*

GIBSON, DUNN & CRUTCHER,
Attorneys for Defendant.

15 EXHIBIT D.

Order Denying Petition for Rehearing.

By the COMMISSION:

The defendant in the above entitled proceeding having filed its petition for rehearing and the Commission having carefully and fully considered this matter on the original motion and no new authorities or arguments having been presented in said petition and no sufficient reason appearing for granting a reharing,

It is hereby ordered, that said petition be and the same is hereby denied.

Dated at San Francisco, California, this 19th day of July, 1913.

JOHN M. ESHLEMAN,
EDWIN O. EDGERTON,
MAX THELAN,
Commissioners.

16 [Endorsed:] No. S. F. 6687. Dept. No. —. In the Supreme Court of the State of California. Wilmington Transportation Co., a corp., Petitioner, vs. Railroad Commission of the State of California, Respondent. Petition for writ of review. Filed Aug. 11, 1913. B. Grant Taylor, Clerk, by Taylor. Received copy of the within —— this — day of ——, 191–. Service admitted this 11th day of August, 1912. Max Thelan, Attorney for Respondent. Gibson, Dunn & Crutcher, Entrance Room 718, Pacific Electric Building, Cor. 6th and Main Sts., Los Angeles, Cal., Attorneys for Petitioner.

17 In the Supreme Court of the State of California.

S. F. No. 6687.

WILMINGTON TRANSPORTATION COMPANY, a Corporation, Petitioner,
vs.
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Respondent.

Order for Issuance of Writ of Review.

By the COURT:

Upon reading the petition of the above entitled petitioner, filed herein on the 11th day of August, 1913, for a writ of review to be issued by this Court to respondent above named, commanding it to certify to this Court a full and complete record of all the proceedings leading up to and including the making by respondent of its order and decision dated July 9, 1913, in the proceeding entitled "Before the Railroad Commission of the State of California, J. H. Miller and E. Donaldson, partners doing business under the firm name and style of Miller & Donaldson, complainants, vs. Wilmington

Transportation Company, a corporation, defendant, Case No. 381," together with petitioner's application for rehearing and respondent's order thereon, it appearing that the writ should be issued as prayed for,

It is hereby ordered that a peremptory writ of review issue out of and under the seal of this Court addressed to respondent commanding said respondent to certify and return to this Court within thirty days from the date of the issuance of the writ herein,
18 a full and complete record of said proceedings, for the purpose of having the lawfulness of said orders and decisions inquired into and determined.

And respondent having stipulated that in case said orders and decisions were erroneous, great and irreparable damage would result to the petitioner unless the operation of said orders and decisions be suspended during the pendency of said writ,

It is hereby ordered that during the pendency of said writ the operation of said orders and decisions of respondent be and they are hereby wholly stayed and suspended. This order staying such operation shall not become effective until a suspending bond in the sum of one thousand ($1,000) dollars shall first have been executed and filed with and approved by respondent, payable to the People of the State of California, to insure the prompt payment by petitioner of all damages caused by the delay in the enforcement of said orders and decisions, in case the same are finally sustained.

Dated at San Francisco, California, this 12th day of August, 1913.

BEATTY, *C. J.*

19 [Endorsed:] S. F. No. 6687. In the Supreme Court of the State of California. Wilmington Transportation Co., a corporation, Petitioner, vs. Railroad Commission of the State of California, Respondent. Order for Issuance of Writ of Review. Copy. Filed August 12th, 1913.

20 Before the Railroad Commission of the State of California.

J. H. MILLER and E. DONALDSON, Partners, Doing Business under the Firm-name and Style of Miller & Donaldson, Complainants.

vs.

THE WILMINGTON TRANSPORTATION COMPANY, a Corporation, Defendant.

Suspending Bond on Certiorari.

Know all men by these presents:

That we, the Wilmington Transportation Company, a corporation, as principal, and D. H. Crowell and P. N. Crowell, of the County of Los Angeles, State of California, as sureties, are held and firmly bound unto the People of the State of California in the sum of One Thousand Dollars ($1,000.00), for the payment of which

sum, well and truly to be made, we bind ourselves, and each of us, our, and each of our, heirs executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals, and dated the 9th day of August, 1913.

Whereas, the above named Wilmington Transportation Company has applied, or is about to apply, to the Supreme Court of the State of California, for a writ of certiorari to review the orders and decisions of the Railroad Commission of the State of California, in the above entitled proceeding, denying the motion of the defendant in said proceeding to dismiss the complaint therein and all proceedings thereon, and requiring the said defendant to satisfy said complaint or answer the same, and also denying the petition of said defendant for a rehearing of said matters; and has also applied,
21 or is about to apply, to said Supreme Court for *for* an order staying and suspending the enforcement of said orders and decisions of said Railroad Commission during the pendency of said writ of review:

Now, therefore, the condition of this obligation is such that if the above named Wilmington Transportation Company shall promptly pay, or cause to be paid, all damages which may be caused by the delay in the enforcement of the said orders and decisions of the Railroad Commission by reason of the pendency of the said writ of review, then this obligation to be void; otherwise to remain in full force and virtue.

[SEAL.] WILMINGTON TRANSPORTATION COMPANY,
By WILLIAM BANNING, *President,*
By DAVID P. FLEMMING, *Secretary.*
D. H. CROWELL. [SEAL.]
P. N. CROWELL. [SEAL.]

STATE OF CALIFORNIA,
County of Los Angeles, ss:

D. H. Crowell and P. N. Crowell, whose names are subscribed as sureties to the foregoing bond, being severally duly sworn, each for himself says, that he is a resident and householder in the said County of Los Angeles, and is worth more than the sum in said bond specified as the penalty thereof over and above all his just debts and liabilities, in property not by law exempt from execution in this state.

D. H. CROWELL.
P. N. CROWELL.

Subscribed and sworn to before me, this 9th day of August, 1913.

[SEAL.] NEVA S. BEDALL,
Notary Public in and for the County of Los Angeles, State of California.

22 [Endorsed:] No. 6687. Before the Railroad Commission of the State of California. J. H. Miller and E. Donaldson, etc., Complainants, vs. Wilmington Transportation Company, a cor-

poration, Defendant. Suspending Bond on Certiorari. Gibson, Dunn & Crutcher, 718 Pacific Electric Building, Los Angeles, Cal. Attorneys for Defendant.

23 In the Supreme Court of the State of California.

S. F. No. 6687.

WILMINGTON TRANSPORTATION COMPANY, a Corporation, Petitioner,
vs.
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Respondent.

Return to Writ of Review.

I, Charles R. Detrick, Secretary of the Railroad Commission of the State of California, respondent in this proceeding, do hereby certify to the Supreme Court of the State of California:

That as Secretary of the Railroad Commission of the State of California I have kept a true and complete record of the transcript of testimony, exhibits, pleadings, record and proceedings in the case before the Railroad Commission entitled "Case No. 381 Before the Railroad Commission of the State of California, J. H. Miller and E. Donaldson, partners doing business under the firm name and style of Miller & Donaldson, complainants, vs. Wilmington Transportation Company, a corporation, defendant;"

That attached hereto is the abstract of testimony taken in said proceeding before the Railroad Commission, together with all exhibits filed in said proceeding and all the pleadings, record and proceedings and all the information secured by the Railroad Commission on its own initiative and considered by it in rendering its decision and order in said proceeding, and that the same constitute a full, true and complete record on review of all proceedings leading up to and including the making of the order and decision of respondent in said proceeding on July 9, 1913, together with
24 petitioner's application for rehearing and respondent's order thereon, in accordance with the directions contained in the writ of review annexed to this return.

In witness whereof I have hereunto set my official signature and affixed the seal of said Railroad Commission of the State of California, this 3rd day of September, 1913.

(Signed) CHARLES R. DETRICK, [SEAL.]
Secretary Railroad Commission of the State of California.

25 [Endorsed:] S. F. 6687. In the Supreme Court of the State of California. Wilmington Transportation Company, a corporation, Petitoner, vs. Railroad Commission of the State of California, Respondent. Return to Writ of Review. (Copy.) Filed Sept. 3, 1913. B. Grant Taylor, Clerk, by Deputy. Max Thelen, Attorney for the Railroad Commission of the State of California, Commercial Building, San Francisco, California.

26 Filed Railroad Commission, State of California, Mar. 25, 1913. Charles R. Detrick, Sec. Case No. 381. Ex. —.

Before the Railroad Commission of the State of California.

J. H. MILLER and E. DONALDSON, Partners, Doing Business under the Firm-name and Style of Miller & Donaldson, Complainants,

v.

THE WILMINGTON TRANSPORTATION COMPANY, a Corporation, Defendant.

Complaint.

The complaint of J. H. Miller and E. Donaldson respectfully shows:

I.

That J. H. Miller and E. Donaldson, the complainants herein, are partners, doing business under the firm name and style of "Miller & Donaldson;" that they are merchants engaged in the business of selling groceries, meats, hardware and provisions at Avalon, Santa Catalina Island, Los Angeles County, State of California, and that their post office address is Avalon, Santa Catalina Island, Los Angeles County, State of California.

II.

That the Wilmington Transportation Company, the defendant herein, is a corporation, organized and existing by virtue of and under the laws of the State of California; that its occupation or business is that of a common carrier of persons and cargo, or freight, or goods; that its vessels ply between the port of San Pedro and that of Avalon, Santa Catalina Island, both of said ports being in the County of Los Angeles, State of California; that its principal place of business is at Wilmington, Los Angeles County, State
27 of California, and that its post office address is 594 Pacific Electric Building, corner of Sixth and Main Streets, in the City of Los Angeles, State of California.

III.

That the distance from the port of San Pedro to that of Avalon, Santa Catalina Island, is about twenty-seven (27) miles; that the Wilmington Transportation Company, the defendant herein, is the only common carrier of persons or freight whose vessels ply between the said two ports; that the rates charged by it for the transportation of persons from San Pedro to Avalon or from Avalon to San Pedro, are One 50/100 ($1.50) dollars per person, each way, or Two 25/100 ($2.25) dollars per person for a round trip; that the rates or freightage charged by it for the transportation of freight, or goods, or cargo are substantially given below, as follows, to-wit:

Brooms	40¢	per 100 lbs.
Cans in boxes or crates	40¢	" " "
Cereals & Produce C. R. Wet & Waste	20¢	" " "
Flour, C. R. Wet & Waste, released	40¢	" " "
China & Jap	40¢	" " "
Cigars	40¢	" " "
Cigars boxed	20¢	" " "
Candy	20¢	" " "
Cream & Dairy Produce	20¢	" " "
Canned Goods	40¢	" " "
Sugar	20¢	" " "
Hardware	20¢	" " "
Paints	20¢	" " "
Furniture	30¢	" " "
Household Furniture	20¢	" " "
Show Cases	60¢	" " "
Goods in Gunny Sacks	20¢	per 100 lbs.
Meats in Gunny Sacks	20¢	" " "
Groceries, Sundries, in barrels or box	20¢	" " "

That the said rates for the transportation of persons, freight, cargo and goods are grossly unjust and unreasonable per se, and that the said rates are contrary to Section 13 (*a*) of the Public Utilities Act for the year 1912.

IV.

That the complainants herein are, and for the last four (4) years have been shippers of goods, freight or cargo, over the steam-ship line of the defendant, on vessels owned by the defendant and operated by it between the said ports of San Pedro and Avalon; that the freightage paid by the plaintiffs to the defendant amounts, and for the last four (4) years past has amounted to about two thousand five hundred ($2,500.00) Dollars for each year; and that by reason of the excessive freight rates charged by the defendant for the transportation of freight, goods or cargo from San Pedro to Avalon during the last four (4) years, the complainants herein have been damaged in the sum of One Thousand ($1,000.00) Dollars per year; and that, in case the defendant is permitted to continue to charge the said rates, the plaintiffs will suffer irreparable injury.

Attention is directed to the erasure of the word "five" in line 11 and also in lines 15 and 19, which is corrected to read "four." This correction in those places was made before this complaint was signed.

[NOTARIAL SEAL.]

W. M. LE FAVOR,
Notary Public in and for
Los Angeles County.

V.

That the rate of One 50/100 ($1.50) Dollars per person for transportation between San Pedro and Avalon, or between Avalon and San Pedro, or of two 25/100 ($2.25) dollars per person for the round trip, between the said two ports, is excessive, prohibitive, un-

just and unreasonable, in that it, the said rate, prevents a multitude of persons from visiting the town of Avalon, Santa Catalina Island, and therefore deprives the said complainants of profits which would undoubtedly accrue to them by reason of extended business.

29 Wherefore, complainants ask that this honorable Board of Railroad Commissioners adjust the rates charged by the said Wilmington Transportation Company for the transportation of persons, or goods, freight or cargo, and that it reduce said rates to a just and reasonable basis.

Dated at Avalon, California, this 21st day of March, 1913.

J. H. MILLER,
Complainant.
E. DONALDSON,
Complainant.

KARL L. RATZER,
Attorney for Complainants,
1146 *Title Ins. Bldg., Los Angles, Calif.*

STATE OF CALIFORNIA,
County of Los Angeles, ss:

J. H. Miller, being first duly sworn, deposes and says: that he is one of the complainants in the action as entitled as above; that he has read the foregoing complaint and knows the contents thereof; and that the same is true as of his own knowledge, except as to matters which are therein stated on information or belief, and that as to those matters he believes it to be true.

J. H. MILLER.

Subscribed and sworn to before me, this 21 day of March, 1913.
[NOTARIAL SEAL.] W. M. LE FAVOR,
Notary Public in and for the County of Los Angeles, State of California.

30 STATE OF CALIFORNIA,
County of Los Angeles, ss:

E. Donaldson, being first duly sworn, deposes and says: that he is one of the complainants in the action as entitled as above; that he has read the foregoing complaint and knows the contents thereof; and that the same is true as of his own knowledge, except as to matters which are therein stated on information or belief, and that as to those matters he believes it to be true.

E. DONALDSON.

Subscribed and sworn to before me, this 21 day of March, 1913.
[NOTARIAL SEAL.] W. M. LE FAVOR,
Notary Public in and for the County of Los Angeles, State of California.

31 [Endorsed:] No. 6687. Before the Railroad Commission of the State of California. J. H. Miller and E. Donaldson,

Complainants, v. Wilmington Transportation Company, a corporation, Defendant. Complaint. Karl L. Ratzer, 1146 Title Ins. Bldg., Los Angeles, Cal., Attorney for Complainants.

32 Before the Railroad Commission of the State of California.

J. H. MILLER and E. DONALDSON, Partners, Doing Business under the Firm-name and Style of Miller & Donaldson, Complainants,

vs.

THE WILMINGTON TRANSPORTATION COMPANY, a Corporation, Defendant.

Defendant's Motion to Dismiss for Want of Jurisdiction.

Now comes the defendant in the above entitled proceeding, and moves to dismiss the said proceeding and the complaint of complainant therein, on the following grounds:

First. That it appears in and by said complaint, that the said Commission has no jurisdiction of, or to proceed against, the said defendant.

Second. That it appears in and by said complaint, that the said Commission has no jurisdiction of, or to proceed upon or in relation to, any of the matters or things alleged in said complaint.

Third. That it appears by said complaint that defendant is engaged in and by the traffic alleged in the complaint, in Interstate Commerce, between ports upon the Pacific Ocean and across one of the great arms thereof, viz.: Gulf of Catalina.

Fourth. That it does not appear from said complaint that plaintiff is engaged in intra-state traffic within the State of California.

Said motion will be based on said complaint, and the papers and files in said proceeding.

Wherefore defendant prays that a day be fixed at the con-
33 venience of said Commission, for the hearing of said motion.

Dated April 19th, 1913.

GIBSON, DUNN & CRUTCHER,
Attorneys for Defendant.

34 [Endorsed:] Copy. S. F. 6687. Before the Railroad Commission of the State of California. J. H. Miller and J. E. Donaldson, partners doing business under the firm name and style of Miller & Donaldson, Complainant, vs. The Wilmington Transportation Company, a corporation, Defendant. Defendant's Motion to Dismiss for Want of Jurisdiction. Filed Apr. 21, 1913. Gibson, Dunn & Crutcher, 718 Pacific Electric Bldg., Los Angeles, Cal., Attorneys for Defendant.

35 Copy.

Decision No. 780.

Before the Railroad Commission of the State of California.

Case No. 381.

J. H. MILLER and E. DONALDSON, Partners, Doing Business under the Firm-name and Style of Miller and Donaldson, Complainants,

vs.

THE WILMINGTON TRANSPORTATION COMPANY, a Corporation, Defendant.

Karl L. Ratzer for complainants.
James A. Gibson for defendant.

Order Denying Motion to Dismiss.

THELEN, *Commissioner*:

This is a motion to dismiss the complaint on the ground that this Commission has no jurisdiction to entertain the same. The defendant contends that this Commission has no authority over the rates of transportation for persons or property over the lines of defendant steamship company between San Pedro on the mainland and Avalon on Santa Catalina Island. Both points are located within the county of Los Angeles, State of California. They are twenty-seven miles apart, of which distance twenty-one miles are on the high seas. Defendant bases its contentions solely on the claim that the commerce affected is commerce "with foreign nations."

The complaint in this case was filed on March 25, 1913, it alleges in effect, that the complainants are engaged in the sale of groceries, meats, hardware and provisions at Avalon, Santa Catalina Island, County of Los Angeles, State of California; that defendant is a California corporation engaged in the business of a common carrier of persons and property between San Pedro and Avalon, both of said places being located within the County of Los Angeles, State
35½ of California; that the distance from San Pedro to Avalon is about twenty-seven miles; that the defendant is the only common carrier of persons or property whose vessels ply between the said two ports; that the rates charged by defendant for the transportation of persons and property are as specifically set out in the complaint, and that they are unjust and unreasonable and contrary to the provisions of Section 13 (*a*) of the Public Utilities Act; that complainants have for the last four years shipped freight over the defendant's line and have paid freightage amounting to about $2,500 per year and that they have been damaged by reason of excessive freightage in the sum of $1,000 per year, and that if defendant is permitted to continue to charge its said rates, complain-

ants will suffer irreparable injury. The complainants ask that this Commission adjust the rates charged by the defendant for the transportation of persons and property and that it reduce said rates to a just and reasonable basis.

On the 21st day of April, 1913, the defendant filed its motion to dismiss the complaint, on the ground that this Commission does not have jurisdiction to entertain the same, and on the particular ground that it appears from the complaint that the defendant is engaged in interstate commerce between ports upon the Pacific Ocean, across one of the great arms thereof, viz., Gulf of Catalina, and, also, that it does not appear from the complaint that the defendant is engaged in intrastate traffic within the State of California.

Thereafter, on June 4, 1913, argument on the motion to dismiss was had before the Commission. At the argument it was stipulated between the parties that all the vessels employed by the defendant in its transportation between San Pedro and Avalon are enrolled and licensed to carry on the coasting trade under the acts of the Federal Congress.

Upon request of the parties, each side was given permission to file briefs, these briefs have now been filed and have been carefully considered.

36 The issue in the present proceeding is whether the Railroad Commission has the authority to establish rates of charges for the transportation of persons and property between two points, both of which are located in Los Angeles County, in this State, the transportation being conducted by means of vessels which, in plying directly between these two ports, traverse 21 miles of high seas, but do not touch at any port either in any other state of this Union or of any foreign nation and do not transfer their passengers or freight to any other vessel or receive the same from any other vessel in their course and which use the high seas simply for the purpose of navigating from one of said points to the other of said points in Los Angeles County. The question at issue is not concerned with passengers or freight which come from or go to points in other states or other nations, but is confined to purely local traffic between points within the State of California.

The defendant contends that the transportation at issue is subject exclusively to the authority of the Federal government, on the ground that it is "commerce with foreign nations," under the provisions of Section 8 of Article 1 of the Constitution of the United States.

Before examining the constitutional questions involved, I desire to draw attention to the fact that if this Commission does not have power over the rates in question, no governmental authority has such power, with the result that the defendant, although a common carrier plying exclusively between points in this State, will be entirely free from governmental regulation as to its rates. This conclusion, if defendant's contentions are correct, follows from the fact that the Federal government has never enacted a statute which affects the commerce concerned in this proceeding, as will hereinafter

appear in greater detail. It goes without saying that the
37 conclusion that the defendant is subject to no governmental regulation as to its rates will not be reached unless it is necessary to do so.

I shall now consider the provisions of the Constitution and Statutes of this State bearing on the question at issue.

Section 17 of Article XII of the Constitution of this State reads in part as follows:

"All railroad, canal and other transportation companies are declared to be common carriers, and subject to legislative control."

Section 22 of Article XII of the Constitution of this State, as amended on October 10, 1911, reads in part as follows:

"There is hereby created a railroad commission which shall consist of five members and which shall be known as the Railroad Commission of the State of California. * * * Said commission shall have the power to establish rates of charges for transportation of passengers and freight by railroads and other transportation companies, and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or freight, or for any service in connection therewith, between the points named in the tariff of rates, established by said commission than the rates, fares and charges which are specified in such tariff."

The Commission is given power, among other things, "to hear and determine complaints against railroad and other transportation companies."

Section 23 of Article XII of the Constitution of this State, as amended on October 10, 1911, provides in part that

"Every common carrier is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the legislature, and every class of private corporations, individuals or associations of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation."

The section further provides as follows:

"The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilties, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution."

Acting under the authority conferred by these various con-
38 stitutional provisions, the Legislature of this State at its extraordinary session in 1911, enacted the Public Utilities Act, which became effective on March 23, 1912. This act provides in part as follows:

SEC. 2 (1). "The term 'common carrier,' when used in this act, includes every railroad corporation; * * * and every corporation or person, their lessees, trustees, receivers or trustees appointed

by any court whatsoever, owning, controlling operating or managing any vessel regularly engaged in the transportation of persons or property for compensation upon the waters of this state or upon the high seas, over regular routes between points within this state."

It will be particularly noted that the term "common carrier" as used in the Public Utilities Act, includes corporations and persons operating vessels regularly engaged in the transportation of persons or property for compensation "upon the waters of this state or upon the high seas" over regular routes "between points within this state." it is obvious that this language completely covers the facts of the present proceeding.

Section 2 (*bb*) provides in part as follows:

"The term 'public utility,' when used in this act, includes every common carrier * * * as those terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this act."

There can be no doubt that under these constitutional and statutory provisions, the State of California has given to this Commission the unquestioned power, in so far as the State could do so, to exercise jurisdiction in the present proceeding. Under these provisions, it has not merely the power but it is also the duty of this Commission to take jurisdiction over complaints such as the one which has been filed in this proceeding, unless said provisions of the Constitution and Statutes of this State violate the Federal Constitution. If such violation exists, the Courts and not this Commission should so declare.

In analyzing the Federal Constitutional questions involved, I shall consider first the power of the states over this subject matter prior to the adoption of the Federal Constitution; then the question whether or not the power of the states in this respect has been delegated to the Federal government; and then the question whether, assuming that this power has been delegated to the Federal government, the states may, nevertheless, exercise the same until the Federal government acts in the matter.

39

That the original thirteen colonies, after the Declaration of Independence in 1776, assumed all the powers of independent sovereignties and exercised many thereof, is well known to students of American constitutional history. An examination of the constitutions of these states, adopted between 1776 and 1787, and an investigation into the acts of these states under such constitutions, shows that they claimed the power to declare war and make peace, to enter into treaties with each other and foreign nations, to impose and collect customs duties and taxes, to send and receive ambassadors, to maintain armies and navies, to grant letters of marque and reprisal, to establish admiralty courts, and to do other acts which distinctively characterize sovereign nations. These powers were claimed and in part exercised by the thirteen original states prior to 1787, except in so far as by the Articles of Confederation they were delegated to the "Confederacy" known as the "United States of America." That each of these states claimed to be sover-

eign and independent and to have all the powers belonging to independent nations appears from Article 2 of the Articles of Confederation, adopted on July 9, 1778, reading as follows:

"Each state retains its sovereignty, freedom and independence and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled."

While it is true that many of the most important attributes of sovereignty were delegated by the respective states to the Confederacy under certain limitations it is important to observe that two powers much needed by the central authority, viz., the power to raise money and to regulate commerce, were retained by the states.

40 The power over commerce was one of the most important which was claimed and exercised by these states. Each state claimed complete sovereignty concerning this power. The existence of this power in the several states was one of the main reasons for the creation of the Federal government. The records of the Congress under the Articles of Confederation for April 30, 1784, show that on said day a resolution was adopted, which resolution, after reciting that

"The situation of commerce at this time claims the attention of the several states, and few objects of greater importance can present themselves to their notice"

continues as follows:

"Resolved, that it be, and it is hereby recommended to the legislatures of the several states to vest in the United States in Congress assembled for the term of fifteen years, with power to prohibit any goods, wares or merchandise, from being imported into or exported from any of the states, in vessels belonging to or navigated by the subjects of any power with whom these states shall not have framed treaties of commerce." (Law of the United States, Vol. 1, p. 45.)

From a report made to the Congress on October 23, 1786, it appeared that none of the states except Delaware had acted in full compliance therewith, although most of them had passed resolutions granting the desired power to Congress, with varying conditions and limitations attached thereto. Nothing further was done as to the matter. The necessity for securing the permission of the states shows that at this time the states had complete power over commerce.

The records of the Congress further show that on July 13, 1785, James Monroe presented to Congress a motion to amend paragraph 9 of the Articles of Confederation, so as to vest Congress with the power to regulate trade "of the states as well with foreign nations, as with each other." This resolution was never adopted.

On January 21, 1786, Virginia proposed to the other states a convention of commissioners from the several states to consider measures necessary to enable Congress to regulate commerce. The resolution adopted by the House of Delegates of Virginia

41 recites first and foremost that the commisioners shall take into consideration "the trade of the United States." In re-

sponse to the invitation of Virginia, five states sent their commissioners to a convention which met in Annapolis on September 11, 1786. While this convention itself accomplished but little, it is well known that it was the precursor of the convention which thereafter met in Philadelphia on the second Monday in May, 1787, and framed the present Federal Constitution.

It is clear that prior to the adoption of the present Federal Constitution, the individual states had complete control over commerce, not only within their borders, but also upon the high seas between ports within their respective limits, and also with foreign nations. It is significant that in the discussions concerning this matter in the period between 1776 and 1787, attention was directed almost solely to navigation as a vehicle of commerce. No railroads had as yet been constructed and the commerce on land between state and state did not call for the regulation which was demanded in connection with commerce by sea, either with foreign nations or between the states or between the ports of each individual state.

That the State of California has all the powers over commerce which the original states had, except in so far as these powers may have been delegated to the Federal government by the Federal Constitution, appears from Section 1 of the Act of September 9, 1850, admitting California to the Union, (9 Stat. 452) reading as follows:

SEC. 1. "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the State of California shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatsoever."

It thus appears that California at the present time has the power to regulate the commerce involved in this proceeding, unless the power over such commerce has been conferred upon the Federal government and unless such delegation in and of itself has taken from the states the right to exercise the power which was unquestionably theirs.

42

In discussing the question whether or not power over the commerce involved in this proceeding has been delegated to the Federal government, it will be necessary to distinguish clearly between the admiralty and maritime jurisdiction on the one hand and the so-called commerce clause of the Federal Constitution on the other. That these two powers are entirely distinct and should not be confused with each other appears from the case of the "Belfast," 74 U. S. (7 Wall.) 624, in which case Mr. Justice Clifford says at page 640:

"Difficulties attend every attempt to define the exact limits of admiralty jurisdiction, but it cannot be made to depend upon the power to regulate commerce, as conferred by the Constitution. They are entirely distinct things, having no necessary connection with one another, and are conferred, in the Constitution, by separate and distinct grants."

The power of the Federal government with reference to admiralty

and maritime matters is conferred by Article III, Section 2, Subsection 1 of the Federal Constitution, reading in part as follows:

"The judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction."

By this clause the Federal Constitution conferred upon the Federal judiciary jurisdiction over all matters which, at the time the Constitution was adopted, were comprehended under the general head of admiralty and maritime matters. This jurisdiction is limited to such contracts, claims and services as are purely maritime. It covers such matters as collisions at sea, contracts for hire of seamen, contracts of affreightmen, marine insurance policies, limitation of owners' liability in case of loss, and maritime torts and crimes. This jurisdiction is not limited to tidewaters but extends to all the navigable waters of the United States and to vessels which may be engaged in purely intrastate commerce on such waters, in so far as concerns subjects which are clearly of an admiralty or maritime nature.

43 Ex parte Berger, 109 U. S. 629; In re Garnett, 141 U. S. 1; The Robert W. Parsons, 191 U. S. 17.

In the present case it is not contended that the power of the Federal government, if it has any, rests on the admiralty and maritime clause of the Constitution. The matter at issue is not essentially a maritime matter. It relates to governmental control over the rates charged by a common carrier, and the essence of the matter is the same, whether the transportation by such common carrier be by land or by water. It follows that if the Federal government has power over this matter it must be under the so-called commerce clause, which we shall hereinafter examine in greater detail. This is the position taken by the defendant in this case and it is the only position which the defendant can take.

In considering this question, it should be borne in mind that the mere fact that an American vessel sails the high seas does not necessarily give to the Federal government authority over all acts in connection with such vessel while it is navigating the common highway of nations. That the state in which the vessel is enrolled and in which its owner resides continues to have important powers in connection with such vessel while on the high seas, has been clearly established by the decisions both of the United States Supreme Court and of the highest courts of different states of the Union. In the case of Crapo vs. Kelly, 83 U. S. (16 Wall.) 610, an insolvency court in Massachusetts purported to pass title to an assignee in insolvency to a vessel enrolled and owned in Massachusetts, and at the time navigating the Pacific Ocean. The title of the assignee was questioned by an attachment creditor, who attached the vessel when it returned to the state of New York. The Supreme Court of the United States held that the title of the Massachusetts assignee prevailed, and in expressing this conclusion, uses the following language at page 624:

"We are of the opinion, for the purpose we are considering, that the ship Arctic is a part of the territory of Massachusetts, and the assignment by the insolvency court of that state passed the title to

her, in the same manner and with the like effect as if she had been physically within the bounds of that state when the assignment was executed."

44 Likewise, in the case of Norman v. Thompson, 121 Cal. 620, the Supreme Court of California, in passing on the validity of a purported marriage of residents of California on the high seas in a California vessel, held that the law of California must govern the transaction and that as the marriage had not been solemnized as provided under the statutes of California, it could not be held to be valid.

It follows from these and similar cases, that the mere fact that an American vessel navigates the high seas does not necessarily mean that the states are divested of jurisdiction with reference to all transactions affecting such vessel.

The defendant in this proceeding contends that the Federal government has control, under the provisions of Article I, Section 8, of the Federal Constitution, providing in part that

"The Congress shall have power * * * to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

It is clear that the question is not one of commerce "with the Indian tribes." It is equally evident that it is not commerce "among the several states." No state other than California is concerned with this commerce. Defendant, however, contends that this is "commerce with foreign nations." This contention is made in the face of the fact that the vessel touches at no foreign port, that no persons or property are transported to or taken from any foreign vessel in the course of the journey between San Pedro and Avalon, and that the voyage is between two California ports situated within the same county in this State, and that the crossing of the high seas is merely an incident to enable the vessel to move from one California port to another. While nine out of ten laymen having an ordinary understanding of the English language, would agree that such commerce can not be "commerce with foreign nations," defendant insists that its position is correct and relies on several authorities in support thereof.

I shall now proceed to consider these authorities.

45 In the case of Lord vs. Goodall, Nelson & Perkins Steamship Co., 102 U. S. 541, an action was brought against the owners of the steamship "Ventura" to recover the value of freight which was lost when that vessel sank at sea on a voyage between San Francisco and San Diego. The defendants contended that under the provisions of Section 4283 of the Revised Statutes, they were liable only for the value of their interest in the vessel and her freight then pending. As the matter was an admiralty matter, clearly under the authority of the Federal government, and completely covered by said section of the Revised Statutes, the judgment of the lower court in favor of the defendants was necessarily affirmed. The case was one arising under the Federal statute creating a limited liability for the owners of vessels, which statute was clearly enacted under the admiralty and maritime powers of the

Federal government, (In re Garnet, 141 U. S. 1, 12; Butler vs. Boston & Savannah Steamship Co., 130 U. S., 527, 555), and in no way involved the commerce clause. Mr. Chief Justice Waite, however, goes out of his way to make certain observations with reference to the commerce clause. He says at page 544:

"The Pacific Ocean belongs to no one nation, but is the common property of all. When, therefore, the Ventura went out from San Francisco or San Diego on her several voyages, she entered on a navigation which was necessarily connected with other nations. While on the ocean her national character only was recognized, and she was subject to such laws as the commercial nations of the world had, by usage or otherwise, agreed on for the government of the vehicles of commerce occupying this common property of all mankind. She was navigating among the vessels of other nations and was treated by them as belonging to the country whose flag she carried. True, she was not trading with them, but she was navigating with them and consequently with them was engaged in commerce. If, in her navigation, she inflicted a wrong on another country, the United States, and not the State of California, must answer for what was done. In every just sense, therefore, she was, while on the ocean, engaged in commerce with foreign nations, and as such she and the business in which she was engaged were subject to the regulating power of Congress."

The logic of this reasoning should be carefully noted. The Chief Justice says, in effect, that the "Ventura," while on the ocean, was "navigating among the vessels of other nations," and that while she was not trading with such vessels, she was nevertheless "navigating" with them. He then reaches the conclusion that she,
46 "consequently, with them was engaged in commerce," and then reaches the final conclusion that she was necessarily "while on the ocean, engaged in commerce with foreign nations." With all due respect to this obiter opinion of the Chief Justice, I submit that it is clearly a logical fallacy. The mere fact that a vessel is sailing on the high seas, which high seas may also be navigated by foreign vessels, is to my mind absolutely inconclusive evidence to show that the vessel is engaged "in commerce with foreign nations." I am unable to understand how a vessel which touches at no foreign port and takes no persons or commodities from a foreign vessel and delivers no persons or commodities to such vessel, and which plies exclusively between two ports within the same county in this State, can be held to be engaged in "commerce with foreign nations."

The Supreme Court of the United States itself, when its attention was thereafter drawn to this reasoning, must have entertained the same views to which I have here given expression. In the case of Lehigh Valley Railroad Co. vs. The Commonwealth of Pennsylvania, 145 U. S. 192, a case involving the power of the State of Pennsylvania to impose a tax on that portion of the receipts of an interstate railroad which represented the mileage moved within the State of Pennsylvania, Mr. Chief Justice Fuller refers to the Lord case, supra. After stating that the single question in that

case "was, as stated by Mr. Chief Justice Waite, delivering the opinion of the court, whether Congress had power to regulate the liability of the owners of vessels navigating the high seas, but engaged only in the transportation of goods and passengers between ports and places in the same state, it being conceded that the voyages of the steamship in respect of whose loss the question arose were always ocean voyages," and after quoting the dictum in the case with reference to commerce with foreign nations, which dictum has hereinbefore been set out in full, Mr Chief Justice Fuller continues, at page 203:

"But it was unnecessary to invoke the power to regulate commerce in order to find authority for the law in question. As stated by Mr. Justice Bradley in re Garnett, 141 U. S. 1: 'The act of Congress which limits the liability of ship owners was passed in amendment of the maritime law of the country, and the power to make
47 such amendment is coextensive with that law. It is not confined to the boundaries or class of subjects which limit and characterize the power to regulate commerce; but, in maritime matters, it extends to all matters and places to which the maritime law extends.' In that case the limited liability act was applied to a steamer engaged in commerce on the Savannah river."

It thus appears that the United States Supreme Court, in its later decision in the Lehigh Valley case, was unwilling to follow the reasoning of Mr. Chief Justice Waite in the Lord case, in so far as concerns the dictum as to commerce with foreign nations. Nevertheless, we find that in certain other cases the dictum in the Lord case has been used without apparently any analysis of the constitutional principles at issue and in spite of the anomalous conclusion to which the dictum leads. I shall hereinafter refer to these decisions.

The defendant also relies on certain language in the Lord case referring to navigation. The authorities have established the principle that the term "commerce," as used in Section 8 of Article I of the Federal Constitution, includes the transportation of men and property, intercourse and navigation. The defendant contends that the present case is one of "navigation" with foreign nations, even if it be not strictly a case of "commerce with foreign nations." It is difficult to understand how a mere substitution of words can change the result. It is true, that under the commerce clause, the Federal government has control over such matters as properly concern navigation of vessels, both on the high seas and on the public waters of the United States within the limits of the states of this Union, even as to vessels engaged entirely in intrastate commerce, if the navigation of those vessels affects the navigation of vessels engaged in interstate commerce or in commerce with foreign nations. (Hazel Kirk, 25 Fed 601; City of Salem, 37 Fed. 846). This principle, however, is confined to those matters which affect the safety of navigation, such as the number of lights which a vessel carries, her safety appliances, the number of passengers which she may convey, and similar matters. These matters are entirely distinct from gov-

ernmental regulation of rates. If "navigation" includes
48 governmental regulation of rates, the control of the Federal government over navigation should logically give to that government also the power to regulate the rates of purely intrastate navigation. The fact that the Federal government does not have this power as to commodities moving in vessels entirely intrastate is conclusive against a similar power on the part of the Federal government, under the doctrine of "navigation," as to the high seas.

The next case on which the defendant relies is the case of Pacific Coast Steamship Co. vs. Board of Railroad Commissioners, 18 Fed. 10, a case decided in 1883. In that case, the Pacific Coast Steamship Company secured from the United States Circuit Court for the District of California, an injunction to restrain the Board of Railroad Commissioners from establishing rates of charges to be collected by the steamships of the plaintiff plying between the ports in the State of California. The case is based on the dictum in the Lord case, hereinbefore referred to. An examination of the original records in this case shows that the complaint and answer were both printed by the same firm and that the only brief which was filed was a two-page memorandum in long hand on the part of the defendants, which memorandum fails to cite a single authority. The court itself expressed doubt as to its jurisdiction in the case, but proceeded by reason of the fact that "the Commissioners have raised no objection on that ground." The case has all the ear marks of a consent proceeding. It was decided before the Supreme Court of the United States in the Lehigh Valley case, supra, had an opportunity to express its more matured views with reference to the dictum in the Lord case, and long before the State of California clearly expressed its intention to exercise the power herein questioned, as it has done in the Public Utilities Act of 1911. The decision is one of an inferior court. No appeal was ever taken. In view of all the circumstances surrounding this case, I can not recommend to the Commission that it disregard the provisions of the Constitution and Statutes
of this State by reason of the decision of an inferior court,
49 rendered on what was clearly a superficial examination of the question.

The case of Cowden vs. Pacific Coast Steamship Company, 94 Cal. 470, was an action to recover damages for discrimination in freight rates between different merchants of San Diego. The freight was transported by the defendant's vessels between San Francisco and San Diego. The court held, on page 474, that the action arose from a maritime contract, and that consequently, in the absence of an allegation of unreasonable rates, which allegation would give to the complainants a remedy at common law in the state courts, the Federal admiralty courts would alone have jurisdiction. The case is clearly correct. The reference to the Lord case must be construed in the light of the real issue presented in the Cowden case, which was one of maritime contract and not one of the power of the state to regulate rates.

In the case of Hanley vs. Kansas City Southern Railway Co.,

187 U. S. 617, the Supreme Court of the United States affirmed a decree of the Circuit Court, granting an injunction to restrain the Railroad Commissioners of Arkansas from fixing and enforcing rates for traffic moving from one point in Arkansas to another point in the same state. It appeared, however, that while the termini were both in Arkansas, the shipments passed for a distance of 64 miles through the Indian Territory. The court very properly held that the movement came within that clause in Section 8 of Article I of the Federal Constitution which gives to the Federal government the power to regulate commerce "among the several states." It is obvious that this was a movement "among the several states." The decision is undoubtedly correct, but it has no material bearing on the case now pending before this Commission, for the reason that it can not possibly be held that the present case is one of commerce "among the several states."

In the Abby Dodge, 223 U. S. 166, a libel was brought against the vessel "Abby Dodge" to forfeit her, or to enforce a money penalty, for a violation of an act of Congress of June 20, 1906, making it unlawful to land sponges in ports of the United States during certain seasons of the year. The libel charged that the "Abby Dodge" had landed at Tarpon Springs, Florida, 1229 bunches of sponges taken from the waters of the Gulf of Mexico and the straits of Florida at a time of the year which was unlawful under the statute. The libel did not say whether the sponges were taken within or without the waters of the state of Florida. Mr. Chief Justice White, in delivering the opinion of the court, accordingly reversed a decree imposing the forfeiture. The court intimated that the libel would be sustained if the sponges were taken on the high seas beyond the limits of the state of Florida. Referring to this point, the court says at page 176:

"Undoubtedly (Lord vs. Steamship Company, 102 U. S. 541) whether the Abby Dodge was a vessel of the United States or of a foreign nation, even though it be conceded that she was solely engaged in taking or gathering sponges in the waters which by the law of nations would be regarded as the common property of all and was transporting the sponges so gathered to the United States, the vessel was engaged in foreign commerce, and was therefore amenable to the regulating power of Congress over that subject. This not being open to discussion, the want of merit of the contention is shown, since the practices from the beginning, sanctioned by the decisions of this court, establish that Congress by an exertion of its power to regulate foreign commerce has the authority to forbid merchandise carried in such commerce from entering the United States."

The decision in this case does not apply to the case now pending before this Commission. If the "Abby Dodge" secured the sponges from the high seas, she did so by sailing out beyond the three mile limit, and then taking from a locality which in a sense might be regarded as foreign, definite articles of commerce, which she thereupon transported to a Florida port. Such navigation to what may be regarded as foreign territory and the transportation from such

locality of articles of commerce, furnishes no analogy to a case in which no commodities whatsoever are taken on board at any points other than points located within the same county in this State, and in which the sole object in navigating the high seas is to move California commodities from one point in California to another point in the same State. It should be noted, also, that the "Abby Dodge" case by inference limits the power of Congress to cases in which Congress has "exerted" its power to regulate foreign
51 commerce. The effect of the failure of Congress to act in the case now before this Commission will hereinafter be considered.

I have now considered all the cases of any moment on which the defendant relies. These cases, to my mind, leave unchanged the simple logic of the situation. As I have heretofore shown, the states of this Union originally had the power to regulate commerce between points within their limits, even if that commerce in a portion of its course traversed the high seas. The states of the Union at present still have that power, unless it has been delegated to the Federal government The Federal government has the power only if it is commerce "with the Indian tribes" or "among the several states" or "with foreign nations." That the commerce in question comes within none of these classes seems too clear for further argument. Accordingly, in my opinion, the power to regulate the rates of transportation in this proceeding vests exclusively in the State of California.

I shall now consider this case on the assumption that my conclusion on the first part of the case is incorrect and that the Federal government may, if it desires to do so, regulate the commerce in question as being commerce "with foreign nations." It becomes necessary in that connection to consider the effect which the failure of Congress to act in the premises has on the State's power. In many cases arising under the commerce clause, the courts have held that the states have the undoubted right, in the absence of legislation by Congress, to enact legislation more or less directly affecting the commerce over which the Federal government may, if it so desires, exert its authority. That the Federal Government has not acted in the matter of regulating commerce wholly by water is clear. The Interstate Commerce Act in no way affects such commerce except in cases of common arrangement or control between a water carrier and a rail carrier. The case before the Commission is not such a case. With reference to the failure of the Federal
52 Congress to act in this field, see In the Matter of Jurisdiction Over Water Carriers, 15 I. C. C. Reports, 205, and Mutual Transit Company vs. United States, 178 Fed. 664, 666. The Act approved August 24, 1912, known as the Panama Canal Act, amends Section 5 of the Interstate Commerce Act so as to give to the Interstate Commerce Commission the power with reference to combined movements by rail and water to establish physical connections, through routes and maximum joint rates, and maximum proportional rates by rail. No power, however, was conferred with reference to movements by water only. No attempt has ever been made by the Federal Congress to enter this field.

While the line between the cases in which non-action by the Federal government with reference to commerce is to be taken as an indication of a desire that there shall be no regulation in the particular field affected and the other cases in which the states may act in such field until Congress acts has been drawn with some accuracy, it is not always easy to apply the principles to the facts of a given case. The principles governing the matter were laid down by the Supreme Court of the United States in the case of Covington & Cincinnati Bridge Co. vs. Commonwealth of Kentucky, 154 U. S. 204. It was held in that case that the state of Kentucky has no power to establish rates of toll over a bridge built over the Ohio river between the states of Kentucky and Ohio. At page 209, Mr. Justice Brown uses the following language:

"The adjudications of this court with respect to the power of the states over the general subject of commerce are divisible into three classes. First, those in which the power of the state is exclusive; second, those in which the states may act in the absence of legislation by Congress; third, those in which the action of Congress is exclusive and the states can not interfere at all.

"The first class, including all those wherein the states have plenary power, and Congress has no right to interfere, concern the strictly internal commerce of the state. While the regulations of the state may affect interstate commerce indirectly, their bearing upon it is so remote that it cannot be termed in any just sense an interference."

Mr. Justice Brown then gives a large number of classes of cases as to which the states have exclusive power. He then, at page 211, refers to another large class of cases of concurrent jurisdic-
53 tion, in which cases the state governments may act until the Federal government legislates in the field. Referring to the third class of cases in which the action of Congress is exclusive and in which a failure of Congress to act is equivalent to a declaration that there shall be no regulation in such field, Mr. Justice Brown says, at page 212:

"But wherever such laws, instead of being of a local nature and not affecting interstate commerce but incidentally, are national in their character, the non-action of Congress indicates its will that such commerce shall be free and untrammelled, and the case falls within the third class of those laws wherein the jurisdiction of Congress is exclusive."

The test seems to be whether the matter is of a local nature or national in its character. In the former case, the states may act until Congress enters the field, while in the latter case the states may not act at all. In a large number of cases the courts have held that the states have the right to act in the absence of action by Congress, even though the action be within a field as to which the Federal government, if it so desired, might exercise exclusive jurisdiction. State legislation has been sustained in such cases with reference to the regulation of pilots—Cooley vs. Philadelphia Port Wardens, 53 U. S. (12 How.) 298; Pacific Mail Steamship Co. vs. Joliffe, 69 U. S. (2 Wal.) 450.

The regulation of wharves, piers and docks—Ouachita Packet Company vs. Aiken, 121 U. S. 444; the construction of dams and bridges across the navigable waters of a state—Escanaba Company vs. Chicago, 107 U. S. 678; the regulation of the delivery of interstate telegraph messages—Western Union Telegraph Company vs. James, 162 U. S. 650, Western Union Telegraph Company vs. Crovo, 220 U. S. 364; the examination of railroad engineers engaged on interstate runs—Smith vs. Alabama, 124 U. S. 465; the heating of steam cars engaged in interstate commerce—New York, New Haven & Hartford Railroad Co. vs. New York, 165 U. S. 628; quarantine and inspection laws—Missouri, Kansas & Texas Railway Co. vs. Haber, 169 U. S. 613; and the prevention of discriminations in switching privileges—Missouri Pacific Railway Co. vs.
54 Larabee Flour Mills Co., 211 U. S. 612. For an extended reference to other cases to the same effect, see the Covington & Cincinnati Bridge Company case, supra, where Mr. Justice Brown collects the leading cases which had been decided up to 1894.

Within the last year or two the Supreme Court of the United States has again announced these principles and applied them in a number of important decisions

In the Second Employer's Liability Cases, 223 U. S. 1, it was held that until Congress acted upon the subject, the several states had the right to determine the liability of interstate carriers for injuries to their employes while engaged in such commerce, but that after Congress had acted, its regulations superseded those of the states in so far as the same subject was covered. Referring to this point, Mr. Justice Van Devanter, in delivering the opinion of the court, says at page 54:

"True, prior to the present act, the laws of the several states were regarded as determinative of the liability of employers engaged in interstate commerce for injuries received by their employes while engaged in such commerce. But that was because Congress, although empowered to regulate that subject, had not acted thereon, and because the subject is one which falls within the police power of the states in the absence of action by Congress (citing numerous authorities)."

In the case of Southern Railway Company vs. Reid, 224 U. S. 424, the question at issue was the validity of a statute of North Carolina requiring the agents and officers of railroads and other transportation companies to receive freight for transportation whenever tendered at a regular station and to forward the same promptly by a route selected by the person tendering the same, with a penalty of $50.00 for each day of refusal, together with damages. The action in the court below was to recover penalties by reason of the failure of the defendant railway company for four days to receive and transport North Carolina goods destined to West Virginia. Judgment for the plaintiff was reversed by the Supreme Court in its decision rendered on January 9, 1912, but only for the reason that the court found that Congress, by enacting the Interstate Commerce Law, had covered the field. After referring with ap-
55 proval to the case of Missouri Pacific Railway Co. vs. Larabee Mills, supra, Mr. Justice McKenna, in delivering the opinion of the court, says at page 437:

"The principle of that case, therefore, requires us to find specific action either by Congress in the Interstate Commerce Act or by the Commission covering the matters which the statute of North Carolina attempts to regulate. There is no contention that the Commission has acted, so we must look to the act. Does it as contended by plaintiff in error, take control of the subject matter and impose affirmative duties upon the carriers which the state cannot even supplement? In other words, has Congress taken possession of the field?"

The court found that Congress had taken possession of the field, and consequently declared the North Carolina statute unconstitutional in so far as it might be construed to apply to interstate commerce.

In the case of Savage vs. Jones, State Chemist of Indiana, 225 U. S. 501, the Supreme Court of the United States considered the validity of the Indiana Pure Food and Drug Act, in so far as it seeks to compel the publication of the ingredients of foods and drugs sold in Indiana, even though the same might come into the state by interstate commerce. Mr. Justice Hughes, in delivering the opinion of the court, on June 7, 1912, points out at page 531, that the Federal Pure Food and Drug Act does not require the disclosure of the ingredients of food or drugs, except in special cases, but that its penalties apply only to the misbranding or adulteration of food or drugs. At page 534, Mr. Justice Hughes uses the following language with reference to the relative powers of the Federal and State governments over this subject matter:

"Undoubtedly Congress, by virtue of its paramount authority over interstate commerce, might have said that such goods should be free from the incidental effect of a state law enacted for this purpose. But it did not so declare.—Is, then, a denial to the state of the exercise of its power for the purpose in question necessarily implied in the federal statute? for when the question is whether a federal act overrides a state law, the entire scheme of the tsatute must, of course, be considered, and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation by Congress within the sphere of its delegated power (citing cases)."

56 Mr. Justice Hughes then continues as follows:

"But the intent to supersede the exercise by the state of its police power as to matters not covered by the federal legislation is not to be inferred from the mere fact that congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of congress, fairly interpreted is in actual conflict with the law of the state (citing numerous cases)."

In the case of Adams Express Company vs. Croninger, 226 U. S. 491, in which the decision of the Supreme Court was rendered on January 6, 1913, it was held that until Congress has acted upon the

subject, the liability of a carrier, although engaged in interstate commerce, for loss or damage to property may be regulated by state laws. The court held, however, that section 20 of the Interstate Commerce Act as amended on June 29, 1906, had covered the field and that consequently the Kentucky statute in question was no longer applicable to loss or damage on interstate shipments. At page 503 of the opinion, Mr. Justice Lurton expresses the conclusion that the state law would have governed if it had not been for the amendment of the Interstate Commerce Act of June 29, 1906, generally known as the Carmack amendment.

Finally, in the so-called Minnesota Rate Cases, in which the decision of the Supreme Court was announced on June 9, 1913, Mr. Justice Hughes reviews at length all the authorities on this question, and in holding that until Congress acts, if it has the right to act, the states may continue to fix intrastate rates even if interstate rates are affected thereby, uses the following language:

"If this authority of the State be restricted, it must be by virtue of the paramount power of Congress over interstate commerce and its instruments; and, in view of the nature of the subject, a limitation may not be implied because of a dormant federal power, that is one which has not been exerted, but can only be found in the actual exercise of federal control in such measure as to exclude this action by the State which otherwise would clearly be within its province."

It was contended in these cases that the action of the state of Minnesota in establishing intrastate rates which had a direct
57 effect on interstate rates was an invasion by the state of the field of interstate commerce, which field had been covered by Congress when it enacted the Interstate Commerce Act. Mr. Justice Hughes, however, holds that the existence of the power in the federal government is not sufficient to bar the states, but that they may continue to act until the "actual exercise of the federal control in such manner as to exclude this action by the state which otherwise would clearly be within its province."

The distinction running through all these cases, as has hereinbefore been said, is that between such regulations as are local in their character and such as are necessarily national. It seems clear that the regulation of the rates of the defendant in this case is a matter purely local in its character and that consequently the state may continue to act, even if this be deemed "commerce with foreign nations," at least until the federal government has covered the field. The commerce affected concerns no state of this Union other than California, nor does it concern any foreign nation. This is not a case of commerce between a point in one state and a point in another state, in which case, if one state has the right to fix the rate, the other state has the same right, thereby producing endless confusion. Such a case is clearly one for the national government and it is accordingly undoubted law that no state has the power to fix an interstate rate. This conclusion, however, does not apply to a case in which one state alone is involved and in which the regulation of rates by that state can have no effect on any other state.

While a portion of the voyage is on the high seas, the navigation thereof is merely incidental to the real purpose of the voyage, which is to ply between two ports both of which are located in the same county in this State. The matter is one purely local to the State of California. Accordingly, under the principles which have been abundantly established, as hereinbefore indicated, the State of California, in my opinion, clearly has the right to regulate the
58 rates for such commerce, at least until the federal government sees fit to act.

While I have fully examined this second point, I do not wish to be understood as believing that it is necessary to do so to decide this motion.

In the absence of language in the decisions, I would say unhesitatingly that it would not have been necessary to examine this point, for the reason that it seems impossible to understand how the commerce affected may by any proper use of the English language be said to be "commerce with foreign nations."

I accordingly recommend that the motion to dismiss the complaint be denied and that this Commission proceed in the exercise of its authority, clearly granted by the Constitution and statutes of this State, to call upon the defendant to satisfy the complaint or to answer within ten (10) days.

I submit herewith the following form of order:

Order.

Defendant's motion to dismiss the complaint in the above entitled proceeding having come on duly for hearing and argument having been had thereon, and said motion having been submitted,

It is hereby ordered that said motion be and the same is hereby denied and that the defendant be and *he* is hereby directed to satisfy the complaint or to answer within ten days.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of July, 1913.

JOHN M. ESHLEMAN,
ALEX. GORDON,
MAX THELEN,
H. D. LOVELAND,
Commissioners.

A true copy.

[Seal Railroad Commission of California.]

CHARLES R. DETRICK,
Secretary Railroad Commission, State of California.

59 [Endorsed:] Case No. S. F. 6687. Before the Railroad Commission of the State of California. J. H. Miller and E. Donaldson, partners, doing business under the firm name and style of Miller and Donaldson, Complainants, vs. The Wilmington

Transportation Company, a corporation, Defendant. Order Denying Motion to Dismiss. Copy. Filed July 9th, 1913. Railroad Commission of the State of California, Tenth floor Commercial Building, 833 Market Street, San Francisco, Cal.

60 **Copy.**

Railroad Commission, State of California. Filed Jul- 17, 1913. Charles R. Detrick, Sec. Case No. 381. Ex. —.

Before the Railroad Commission of the State of California.

Case No. 381.

J. H. MILLER and E. DONALDSON, Partners, Doing Business under the Firm Name and Style of Miller and Donaldson, Complainants,

vs.

THE WILMINGTON TRANSPORTATION COMPANY, a Corporation, Defendant.

Petition for Rehearing.

The defendant in the above entitled proceeding respectfully petitions that a rehearing be granted of defendant's motion to dismiss the said proceeding and the complaint therein, and of the decision and order of this Commission made in said proceeding, assuming jurisdiction thereof, and of said complaint therein, and requiring this defendant to satisfy the said complaint or to answer the same; and as grounds for such rehearing defendant avers:

1. That the transportation of passengers and freight by the defendant between the ports of San Pedro and Avalon, referred to in said complaint herein, comprises and constitutes commerce with foreign nations, and that exclusive jurisdiction to regulate the same is vested by the Constitution of the United States of America in the Congress of the United States.

2. That the Constitution and statutes of the State of California, purporting to give to this Commission jurisdiction to regulate transportation of passengers or freight over waters lying outside of the territorial jurisdiction of said state are contrary to and in
61 violation of said Constitution of the United States and of no effect.

3. That this Commission has no jurisdiction or authority to regulate said transportation referred to in said complaint herein or to adjust, reduce, or regulate the rates or fares charged by the defendant therefor.

4. That the said decision and order of this Commission requiring this defendant to satisfy said complaint herein or to answer the same is unlawful and in excess of the authority or jurisdiction of this Commission.

5. That this defendant, by its said motion to dismiss this proceeding and said complaint herein, has claimed, and by this petition for a rehearing herein now claims, the right, privilege and immunity under the Constitution and laws of the United States to be free of any control or interference by this Commission in the matter of said transportation of freight and passengers between said ports of San Pedro and Avalon and the rates and fares charged therefor; and that said decision and order of this Commission requiring this defendant to satisfy said complaint herein or to answer the same is against, and denies to this defendant, said right, privilege and immunity so claimed by this defendant.

Wherefore, this defendant prays that a rehearing be granted by this Commission as aforesaid, and that thereupon said decision and order requiring this defendant to satisfy said complaint herein or to answer the same, may be vacated and set aside, and this proceeding and the said complaint herein be dismissed.

WILMINGTON TRANSPORTATION COMPANY,
By WILLIAM BANNING, *President.*

GIBSON, DUNN & CRUTCHER,
Attorneys for Defendant.

62 [Endorsed:] Copy. Case No. 6687. Before the Railroad Commission of the State of California. J. A. Miller and E. Donaldson, etc., Complainants, vs. The Wilmington Transportation Company, a corporation, Defendant. Petition for Rehearing. Gibson, Dunn & Crutcher, Attorneys for Defendant.

63 **Copy.**

Decision No. 803.

Before the Railroad Commission of the State of California.

Case No. 381.

J. H. MILLER and E. DONALDSON, Partners, Doing Business under the Firm Name and Style of Miller and Donaldson, Complainants,

vs.

THE WILMINGTON TRANSPORTATION COMPANY, a Corporation, Defendant.

Order Denying Petition for Rehearing.

By the COMMISSION:

The defendant in the above entitled proceeding having filed its petition for rehearing and the Commission having carefully and fully considered this matter on the original motion and no new au-

thorities or arguments having been presented in said petition and no sufficient reason appearing for granting a rehearing,

It is hereby ordered, that said petition be and the same is hereby denied

Dated at San Francisco, California, this 19th day of July, 1913.

JOHN M. ESHLEMAN,
EDWIN O. EDGERTON,
MAX THELEN,
Commissioners.

A true copy.

[Seal Railroad Commission, State of California.]

H. G. MATHEWSON,
Assistant Secretary, Railroad Commission, State of California.

64 [Endorsed:] Case No. 6687. Before the Railroad Commission of the State of California. J. H. Miller and E. Donaldson, partners, doing business under the firm name and style of Miller & Donaldson, Complainants, vs. The Wilmington Transportation Company, a corporation, Defendant. Order Denying Petition for Rehearing. Copy. Filed July 19, 1913. Railroad Commission of the State of California, Tenth Floor Commercial Building, 833 Market Street, San Francisco, Cal.

65 Filed Dec. 29, 1913. B. Grant Taylor, Clerk, by Dryden, Deputy.

(Filed December 29, 1913.)

In the Supreme Court of the State of California.

Bank.

S. F. No. 6687.

WILMINGTON TRANSPORTATION COMPANY (a Corporation), Petitioner,
vs.
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Respondent.

Opinion of Court.

This is a proceeding inaugurated by petitioner under the provisions of section 67 of the act known as the Public Utilities Act (approved December 23, 1911), for the purpose of having the lawfulness of an order of the Railroad Commission of this State inquired into and determined. The order was one made by the Railroad Commission in a certain proceeding pending before that body in which the firm of Miller & Donaldson are complainants, and

petitioner here is defendant, inaugurated with a view of the proper adjustment and reduction of rates and fares charged by petitioner for the transportation of passengers and freight between the ports of San Pedro and Avalon, both of which are situated in the County of Los Angeles in this state. The order, the validity of
66 which we are asked to inquire into and determine, was one denying a motion to dismiss the proceeding, and requiring petitioner to satisfy the complaint or to answer within ten days. The motion was based upon the claim that the Railroad Commission had no jurisdiction in the matter.

No suggestion is made by respondent that the law does not contemplate a review by this court of an order of the character here involved, but was intended simply to provide for a review of what might properly be considered a final order or judgment in any proceeding before the Commission. The parties have addressed themselves solely to the question they apparently desire to have decided, viz: the jurisdiction of the Commission under such circumstances as here exist. We have not considered at all the question we have just suggested, and this decision is not to be taken as expressing any view thereon.

The petitioner is a California corporation, with its principal place of business in Los Angeles county, in this state. Its occupation or business is that of a common carrier of persons and freight, by sea, between the port of San Pedro, and that of Avalon, Santa Catalina Island, both of which ports are, as we have said, in Los Angeles county. The whole of Santa Catalina Island is a part of Los Angeles county. Notwithstanding that the ports are in the same county, a vessel, in passing directly from one to the other, must travel for upwards of twenty miles upon the high seas, outside of the territorial jurisdiction of this state. As said in respondent's brief: "Vessels plying between San Pedro and Avalon cross the high seas for the sole purpose of getting from one point in Los Angeles county to another point in the same county. They do not touch at any
67 other port, either of the United States or of any foreign country. They do not transfer their passengers or freight to any other vessel or receive the same from any other vessel in their course. They do not on the voyage take on or put off any article of commerce. While a portion of the voyage is on the high seas, the navigation thereof is merely incidental to the real purpose of the voyage, which is to ply between two ports, both of which are located in the same county in this state."

Our law confers upon the Railroad Commission the power to establish rates of charges for transportation of passengers and freight by railroads and other transportation companies. (Con. sec. 22, art. XII.) In section 23 of art. XII, it is stated that "every common carrier is hereby declared to be a public utility subject to such control and regulation by the railroad commission as may be provided by the legislature," and the railroad commission is empowered to fix the rates to be charged for services rendered by public utilities, as authorized by the legislature, and it is further provided that "the right of the legislature to confer powers upon the railroad com-

mission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution." In section 2, subdivision 1 of the Public Utilities Act, it is provided that the term "common carrier" when used in the act, includes, among others, "every corporation or person * * * owning, controlling, operating or managing any vessel regularly engaged in the transportation of persons or property for compensation upon the waters of this state or upon the high seas, over regular routes between points within this state." It is not to be doubted that these provisions purport to confer jurisdiction upon the Railroad Commission in the matter of fixing the rates to be charged by petitioner for transportation of passengers and freight between San Pedro and Avalon, notwithstanding that the vessels, in passing from one of these ports to the other, must travel in part over the high seas, and outside of the territorial jurisdiction of the state of California.

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The sole claim of petitioner is that the Railroad Commission of this state has no jurisdiction to regulate the rates charged for such transportation, for the reason that in so far as such transportation is over the high seas, the power to regulate the charges therefor is vested exclusively in the Congress of the United States by virtue of the declaration in section 8 of article I of the Federal Constitution, that "The Congress shall have power * * * to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." If not so vested in the Congress of the United States by this provision, confessedly the Railroad Commission has jurisdiction in the matter. It is obvious that we have here no attempt to regulate commerce among the different states of the United States, or with the Indian tribes. The claim of petitioner must therefore be and is, that under the circumstances above set forth, petitioner's vessels, while on the high seas on their trips between San Pedro and Avalon, are engaged in "commerce with foreign nations."

In view of the admitted facts, it is difficult to find any ground for this claim, except such as is to be found in some language used in certain decisions. In the absence of clear expression to the contrary by the Supreme Court of the United States on the subject, and treating the matter independent of authority, we should not hesitate to say that no support whatever for the claims is to be found in the language referred to. What possible "commerce with" any foreign nation or nations is involved under the circumstances existing here, even if we treat the word "commerce" as synonymous with "intercourse," as is claimed by petitioner should be done? All the traffic and intercourse are between two ports in the same county and state, and no part of the transportation is over the territory of any other state or of any foreign nation or nations, the route so far as it is outside of the state of California being over territory not owned by any particular nation or nations, but open for the purposes of travel and transportation to the use of the people of all nations. Intercourse or commerce with a foreign nation would necessarily seem to imply something more than the

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mere passing of ships on this common pathway It would seem to necessarily involve some traffic in the territory of the foreign nation or some movement of persons or property to or from the territory or vessels of such foreign nation. The object of the provision of the Federal Constitution was stated by the United States Supreme Court in Lehigh Valley Railroad v. Pennsylvania, 145 U. S., 192, as follows: "The conflict between the commercial regulations of the several states was destructive *to* their harmony and fatal to their commercial interests abroad, and this was the mischief intended to be obviated by the grant to the Congress of the power to regulate commerce with foreign nations and among the states." (See also County of Mobile v. Kimball, 102 U. S., 691.) Obviously, such commerce as is here involved, does not come within the "mischief intended to be obviated" by the section, those in the State of California being the only persons concerned therein.

70 There is, however, certain language in some of the decisions tending to support petitioner's view, and there is also one decision of a United States Circuit Court which appears to be squarely in point.

The principal case relied on by petitioner is that of Lord vs. Steamship Co., 102 U. S., 541, a case involving the application of the federal limited liability law to contracts of affreightment between two ports of this state. These contracts could not be performed except by going not only out of California, but out of the United States as well. There was really no question of commerce with a foreign nation involved in this case, for the limited liability law was not enacted by Congress under its power to regulate commerce, but was attributable entirely to the exercise of its admiralty and maritime jurisdiction, a power, as said in Lehigh Valley R. R. vs. Pennsylvania, supra, "not confined to the boundaries or class of subjects which limit and characterize the power to regulate commerce; but, in maritime matters, it extends to all matters and places to which the maritime law extends," even, as was held in In re Garnett, 141 U. S., 1, to a steamer engaged in commerce on a river within a state. It was applicable, of course, to any vessel navigating the high seas, even though the voyage was between ports in the same state, altogether regardless of whether or not the vessel was engaged in commerce with a foreign nation. This was declared in Lehigh Valley R. R. Co. vs. Pennsylvania, supra, to have been the single question in the Lord case, the court saying: "The single question in Lord vs. Steamship Co. was * * * whether Congress had power to regulate the liability of the owners of vessels navigating the high seas, to engage only in the transportation of

71 goods and passengers, between ports and places in the same state, it being conceded that the voyages of the steamship in respect to whose loss the question arose were always ocean voyages." And the court further said that in that case it was unnecessary to invoke the power to regulate commerce in order to find authority for the law in question, thereby practically discrediting what was said in the opinion in the Lord case as to what constitutes commerce with a foreign nation. With all due respect to the learned author

of the opinion in the Lord case, we must confess that we are unable to follow his reasoning upon this question. Substantially he says: the vessel there involved, traveling between two ports in this state, "was navigating among the vessels of other nations;" that while she was not trading with them, she was "navigating with them," and consequently "with them was engaged in commerce;" if in her navigation she inflicted a wrong on another country, the United States, and not the state of California, must answer for what was done; "in every just sense, therefore, she was, while on the ocean, engaged in commerce with foreign nations." The conclusion on this point appears to us to be without any support in the reasoning. The conclusion that the limited liability law was applicable was undoubtedly correct for the reason stated in the latter case of Lehigh Valley R. R. Co. vs. Pennsylvania, supra, but in view of what is said in the latter case as to the true ground of decision in the Lord case, we do not feel bound to follow the views expressed in the Lord case as to what constitutes commerce with foreign nations.

The circuit court case to which we have referred is Pacific Coast S. S. Co. vs. Board of R. R. Commissioners, 18 Fed. Rep., 10.
72 This case was decided prior to the decision of the Supreme Court in Lehigh Valley, etc., Co. vs. Pennsylvania, supra, and appears to have been based upon what was said in the Lord case.

Henley vs. Kansas City Southern Railway Co., 187 U. S., 617, was a case involving the right of the Railroad Commission of Arkansas to fix and enforce rates for traffic moving from one point in Arkansas to another point in the same state, where the shipments passed for a distance of sixty-four miles through the "Indian Territory," which was held to come within the meaning of the word "states" in the clause "among the several states" in section 8 of article I of the Constitution. It was held that the exercise of any such right would be an attempted regulation of commerce "among the several states," a matter within the exclusive province of Congress under the express language of the constitutional provision. It will be observed that this case involved in part the transportation of goods and persons over the territory of what was held to be another state, something coming within the broad definition of the term "commerce" given in one or two of the decisions, and which might fairly be held to be commerce "among the several states." But we are at a loss to see the applicability of this decision to the facts in the case at bar, where the only prohibition we have to meet is that relating to "commerce with foreign nations." Bearing in mind that the high seas belong to no nation, constituting simply the common highway of all nations, it seems to us that the decision is in no way applicable. What may be claimed to have been said in the Hanley case as to the right of a state to regulate commerce being limited to commerce within the state, or strictly domestic commerce, must be taken in the light of the facts of that case, which shows an attempt to regulate commerce in another state. A state of course has no power to regulate commerce among the several states or
73 with a foreign nation. But it has all powers in regard to commerce that have not been delegated to Congress.

In The Abby Dodge vs. United States, 223 U. S. 166, it was declared that a vessel engaged in gathering sponges on the high seas and without the limits of any state, and transporting the same to the United States, is engaged in foreign commerce, and is therefore amenable to the regulative power of Congress upon that subject, including the power to forbid merchandise carried in such commerce from entering the United States. It appears reasonable enough to conclude that in taking sponges from the high seas and without the limits of any state, the transporting them to the United States, the vessel was engaged in "foreign," as distinguished from strictly "domestic" commerce. The court did not expressly hold that the vessel was engaged in commerce with foreign nations, but holding that it was engaged in "foreign commerce," declared that "the practices from the beginning, sanctioned by the decisions of this court, establish that Congress by an exertion of its power to regulate foreign commerce, has the authority to forbid merchandise carried in such commerce from entering the United States," citing Buttfield v. Stranahan, 192 U. S. 470, 492-492.

The case of Cowden v. Steamship Co., 94 Cal. 470, involved a matter of maritime contract.

There is no other case cited requiring notice.

In no case cited except the Lord case is it expressly declared that such commerce as is here involved is "commerce with foreign nations." In no decision of the United States Supreme Court has it been squarely decided that a state may not regulate charges for transportation under such circumstances as exist here. Of course,

74 the position of learned counsel for petitioner is that the decisions cited establish the proposition that the mere transportation of passengers and freight constitutes commerce, and that in so far as such transportation is over the territory of another state it is interstate commerce, and in so far as it is over the territory of another nation, it is commerce with that nation. All this may be here assumed to be true. But here the transportation is not over the territory of any other state or any foreign nation, but over the high seas, constituting the common highway of the people of all nations. It does seem to us that under such circumstances, whether the mere transportation over the high seas be deemed commerce or not, it is not in itself commerce with foreign nations, and that some other element, such as transportation to a foreign port, or delivery of the goods to a foreign vessel, etc., would be essential to make it commerce with foreign nations. We are unable to see that all transportation over waters outside of the territorial limits of a state is necessarily commerce with foreign nations. In our judgment it may or may not be such, depending on other facts, and we think that the facts in the case at bar are not such as to make it such commerce. We realize that in view of certain expressions in some of the decisions, the question is not entirely free from doubt, however plain it may appear to us as an original proposition. If we are in error in our conclusion as to the effect of the decisions of the

Supreme Court of the United States in this matter, it will be a simple matter for petitioner to obtain redress in the federal courts.

The order of the Railroad Commission is affirmed.

ANGELLOTTI, *J.*

We concur:
SHAW, *J.*
LORIGAN, *J.*
HENSHAW, *J.*
MELVIN, *J.*

75 In the Supreme Court of the State of California.

WILMINGTON TRANSPORTATION COMPANY, a Corporation, Petitioner,
vs.
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Respondent.

Petition for Writ of Error.

Considering itself aggrieved by the final judgment and decree of the Supreme Court of the State of California rendered against it in the above entitled cause, as will more fully appear from the assignment of errors exhibited herewith, the petitioner, Wilmington Transportation Company, hereby prays that a Writ of Error may issue, and that it may be allowed to bring up for review, before the Supreme Court of the United States, the judgment and decree of said Supreme Court of the State of California, in the above entitled cause.

GIBSON, DUNN & CRUTCHER,
Attorneys for Petitioner.

76 In the Supreme Court of the State of California.

WILMINGTON TRANSPORTATION COMPANY, a Corporation, Petitioner,
vs.
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Respondent.

Order Allowing Writ and Fixing Bond.

Upon reading the foregoing petition of the Wilmington Transportation Company in the above entitled cause, it is ordered that a Writ of Error issue, as therein prayed, upon the execution of a bond by said petitioner to the Railroad Commission of the State of California in the sum of One Thousand ($1,000.00) Dollars, such bond, when approved, to act as a supersedeas.

Dated February 2, 1914.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

77 [Endorsed:] No. S. F. 6687. Dept. No. —. In the Supreme Court of State of California. Wilmington Trans-

portation Company, a corporation, Petitioner, vs. Railroad Commission of the State of California, Respondent. Petition for Writ of Error and Allowance. Filed Feb. 2, 1914. B. Grant Taylor, Clerk, by Erb, Deputy. Gibson, Dunn & Crutcher, Entrance Room 718, Pacific Electric Building, Cor. 6th and Main Sts., Los Angeles, Cal., Attorneys for Petitioner.

78 In the Supreme Court of the United States.

WILMINGTON TRANSPORTATION COMPANY, a Corporation, Plaintiff in Error,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Defendant in Error.

Assignment of Errors and Prayer for Reversal.

Now comes the Wilmington Transportation Company, the petitioner and plaintiff in error in the above entitled cause, and files herewith its petition for a Writ of Error, and says that there are errors in the records and proceedings in said cause in the Supreme Court of the State of California, and for the purpose of having the same reviewed in the Supreme Court of the United States, makes the following assignment of errors:

I.

The Supreme Court of the State of California erred in holding and deciding that the transportation of passengers and freight by the petitioner, Wilmington Transportation Company, over the high seas, for a distance of upwards of twenty miles, between the ports of San Pedro and Avalon (each of said ports being in the State of California), does not constitute commerce with foreign nations, within the meaning of Section 8, of Article I, of the Constitution of the United States.

II.

Said Court erred in holding and deciding that the authority sought to be exercised by the Railroad Commission of the State of California, under said State of California, to regulate the rates to be charged by said petitioner for such transportation over the high seas, and to otherwise regulate such transportation is valid, and
79 not repugnant to the Constitution of the United States, and particularly to said Section 8, of Article I, thereof.

III.

Said Court erred in holding and deciding that the Constitution and statutes of the State of California, and in particular sections 20, 21, 22, 23, and 24, of Article XII, of said Constitution, and the act of the legislature of the State of California, approved December 23rd, 1911, and known as the "Public Utilities Act," and the acts

amendatory thereof, purporting to vest in the Railroad Commission of the State of California the authority to regulate rates for such transportation over the high seas, and to otherwise regulate such transportation, are valid and not repugnant to the Constitution of the United States, and particularly to said Section 8, of Article I, thereof.

IV.

Said Court erred in deciding against and denying the right, privilege and immunity specially set up and claimed by said petitioner before said Railroad Commission of the State of California and before said Supreme Court of the State of California, under the Constitution of the United States, to be free of any control or interference by said Railroad Commission in the matter of said transportation by said petitioner over the high seas, and of the rates charged by said petitioner for such transportation.

V.

Said Court erred in adjudging and decreeing that the order of said Railroad Commission of the State of California denying the motion of said Wilmington Transportation Company to dismiss, for want of jurisdiction in said Commission, the complaint filed with said Commission by Miller & Donaldson, complaining of the rates charged by petitioner for the transportation aforesaid, and
80 praying that said Commission adjust and reduce said rates, was valid; and in refusing to vacate and annul said order, said motion to dismiss said complaint having been made and based on the ground that the authority to be exercised by said Commission in hearing and acting upon said complaint was repugnant to the Constitution of the United States, and particularly to said Section 8, of Article I, thereof.

VI.

Said Court erred in adjudging and decreeing that the order of said Railroad Commission of the State of California requiring said Wilmington Transportation Company to satisfy or answer said complaint of said Miller & Donaldson, made after denying said motion to dismiss said complaint, was valid; and in refusing to vacate and annul said order.

VII.

Said Court erred in adjudging and decreeing that the order of said Railroad Commission of the State of California, denying the petition of said Wilmington Transportation Company for a rehearing of its aforesaid motion to dismiss said complaint of Miller & Donaldson, was valid, and in refusing to vacate and annul said order; said petition having been expressly made and based on the ground that the aforementioned Constitution and statutes of the State of California, purporting to vest in said Railroad Commission of the State of California authority to regulate such transportation

upon the high seas, are void and repugnant to said Constitution of the United States, and particularly to said Section 8, of Article I, thereof.

For the errors aforesaid, the petitioner, Wilmington Transportation Company, prays that the final judgment of the Supreme Court of the State of California, made and rendered in said cause on the 29th day of December, 1913, be reversed, and a judgment rendered in favor of said petitioner, and for costs.

J. A. GIBSON,
GIBSON, DUNN & CRUTCHER,
Attorneys for Petitioner.

81 [Endorsed:] No. 6687. Dept. No. —. In the Supreme Court of the United States. Wilmington Transportation Company, a corporation, Plaintiff in Error, vs. Railroad Commission of the State of California, Defendant in Error. Assignment of Errors and Prayer for Reversal. Filed Feb. 2, 1914. B. Grant Taylor, Clerk, by Erb, Deputy. Gibson, Dunn & Crutcher, Entrance Room 718, Pacific Electric Building, Cor. 6th and Main Sts., Los Angeles, Cal., Attorneys for Plaintiff in error.

82 **Copy.**

In the Supreme Court of the State of California.

WILMINGTON TRANSPORTATION COMPANY, a Corporation, Petitioner and Plaintiff in Error,
vs.
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Respondent and Defendant in Error.

Bond.

Know all men by these presents:

That we, Wilmington Transportation Company, a corporation, as Principal, and P. N. Crowell and A. H. Splittstoesser, as Sureties, are held and firmly bound unto the Railroad Commission of the State of California, Respondent and Defendant in Error in the above entitled cause, in the sum of One Thousand ($1,000) Dollars, to be paid to said Respondent and Defendant in Error, to which payment well and truly to be made we bind ourselves, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 31st day of January, 1914.

Whereas, the above named Petitioner and Plaintiff in Error seeks to prosecute its Writ of Error to the Supreme Court of the United States to review and reverse the judgment entered in the above entitled action by the Supreme Court of the State of California,

Now therefore, the condition of this obligation is such that if the

above named Petitioner and Plaintiff in Error shall prosecute
83 its said Writ of Error to effect and answer all costs and damages that may be adjudged, if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and effect.

[SEAL.] WILMINGTON TRANSPORTATION COMPANY,
By HANCOCK BANNING, *2d Vice President,*
And DAVID P. FLEMING, *Secretary.*
P. N. CROWELL,
A. H. SPLITTSTOESSER.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

P. N. Crowell and A. H. Splittstoesser, the sureties whose names are subscribed to the foregoing undertaking, being severally duly sworn, each for himself says that he is a resident and freeholder within the State of California, and is worth the sum for which he becomes surety on said undertaking, over and above all his just debts and liabilities, exclusive of property exempt from execution.

A. H. SPLITTSTOESSER.
P. N. CROWELL.

Subscribed and sworn to before me, this 31st day of January, 1914.

[SEAL.] NEVA S. BEDALL,
Notary Public in and for the County of Los Angeles, State of California.

Bond approved, and to operate as a supersedeas.
Dated February 2nd, 1914.

W. H. BEATTY,
Chief Justice Supreme Court of the State of California.

84 [Endorsed:] No. S. F. 6687. Dept. No. —. In the Supreme Court of the State of California. Wilmington Transportation Company, a corporation, petitioner and Plaintiff, vs. Railroad Commission of the State of California, Respondent & Defendant in error. Bond. Filed Feb. 2, 1914. B. Grant Taylor, Clerk, by Erb, Deputy. Gibson, Dunn & Crutcher, Entrance Room 718, Pacific Electric Building, Cor. 6th and Main Sts., Los Angeles, Cal., Attorneys for Plaintiff.

85 S. F. 6687.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of California, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Wilmington Transportation Company, a corporation, petitioner, and the Railroad Commission of the State of California, respondent, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said Wilmington Transportation Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the
86 same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within sixty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 2nd day of February in the year of our Lord one thousand nine hundred and fourteen.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
Clerk District Court United States,
Northern District of California.

Allowed Feb'y 2d, 1914.
W. H. BEATTY,
Chief Justice Supreme Court
of the State of California.

87 [Endorsed:] S. F. 6687. Wilmington Transportation Company, a corporation, Plaintiff in Error, vs. Railroad Commission of the State of California, Defendant in Error. Writ of Error. Filed Feb. 2, 1914. B. Grant Taylor, Clerk, by Erb, Deputy.

88 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Railroad Commission of the State of California, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within sixty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of California, wherein the Wilmington Transportation Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of California, this second day of February, 1914.

W. H. BEATTY,
Chief Justice Supreme Court
of the State of California.

Attest:

[Seal Supreme Court of California.]

B. GRANT TAYLOR,
Clerk Supreme Court of the State of California.

SAN FRANCISCO, CALIFORNIA, January —, 1914.

We, attorneys of record for the defendant in error in the foregoing entitled case, hereby acknowledge due service of the foregoing citation, and enter an appearance in the Supreme Court of the United States.

MAX THELEN,
DOUGLAS BROOKMAN,
Attorneys for the Railroad Commission
of the State of California.

89 [Endorsed:] S. F. 6687. Wilmington Transportation Company, a corporation, Plaintiff in Error, vs. Railroad Commission of the State of California, Defendant in Error. Citation. Filed Feb. 2, 1914. B. Grant Taylor, Clerk, by Erb, Deputy.

90 In the Supreme Court of the State of California.

S. F. No. 6687.

WILMINGTON TRANSPORTATION COMPANY, a Corporation, Petitioner,
vs.
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Respondent.

Stipulation.

It is hereby stipulated by and between the parties to this proceeding that the documents hereinafter tabulated shall constitute the full and complete record on review to be returned to the Supreme Court of the United States by the Supreme Court of the State of California, in the event that a writ of error issue to the Supreme Court of the United States to review the decision of the Supreme Court of the State of California made in this proceeding on December 29, 1913:

1. Complaint of J. H. Miller and E. Donaldson filed with the Railroad Commission of the State of California on March 25, 1913.

2. Motion of Wilmington Transportation Company to dismiss complaint, of J. H. Miller and E. Donaldson, filed April 21, 1913.

3. Opinion and order of the Railroad Commission, dated July 9, 1913, decision No. 780, denying the motion of Wilmington Transportation Company to dismiss the complaint of Miller and Donaldson.

91 4. Petition of Wilmington Transportation Company for rehearing, filed July 17, 1913.

5. Order of Railroad Commission denying application for rehearing made July 19, 1913.

6. Petition of Wilmington Transportation Company to Supreme Court of the State of California for writ to review, filed August 11, 1913.

7. Order of Supreme Court of the State of California that writ of review issue, and writ of review made August 12, 1913.

8. Suspending bond filed by Wilmington Transportation Company and order of Railroad Commission approving suspension bond, dated August 12, 1913.

9. Return to writ of review filed September 3, 1913.

10. Decision of the Supreme Court of the State of California, rendered December 29, 1913.

Dated at San Francisco, California, this 2d day of February, 1914.

JAS. A. GIBSON,
GIBSON, DUNN & CRUTCHER,
Attorneys for Petitioner.

MAX THELEN,
DOUGLAS BROOKMAN,
Attorneys for Respondent.

92 SUPREME COURT,
State of California, ss:

I, B. Grant Taylor, Clerk of the above entitled Court, do hereby certify that the foregoing documents, to wit: Petition for Writ of Review, Order for Issuance of Writ of Review, Suspending Bond on Certiorari, Return to Writ of Review (containing Complaint, Defendant's Motion to Dismiss, Order Denying motion, Petition for Rehearing and Order Denying Petition) Opinion of Supreme Court of California, Petition for Writ of Error, Assignment of Errors, Bond, Writ of Error and Citation, constitute a full and complete transcript of the record and proceedings, in the case of Wilmington Transportation Company, a corporation, petitioner, versus Railroad Commission of the State of California, respondent, and also of the opinions of the Commission and this Court, rendered therein, and stipulation as the same now appear on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in San Francisco, California, this 5th day of February, A. D. 1914.

[Seal Supreme Court of California.]

B. GRANT TAYLOR.
Clerk of the Supreme Court
of the State of California.

Endorsed on cover: File No. 24,062. California Supreme Court. Term No. 369. Wilmington Transportaion Company, plaintiff in error, vs. Railroad Commission of California. Filed February 19th, 1914. File No. 24,062.